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PHILIPS LUMILEDS LIGHTING COMPANY, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPISTAR CORPORATION,

Plaintiff,

v.

PHILIPS LUMILEDS LIGHTING
COMPANY, LLC,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. C-07-5194 CW

**DECLARATION OF RYAN SCHER IN
SUPPORT OF MOTION BY PHILIPS
LUMILEDS LIGHTING COMPANY, LLC
FOR JUDGMENT ON THE PLEADINGS
WITH RESPECT TO EPISTAR
CORPORATION'S FIRST, THIRD, AND
FOURTH CLAIMS REGARDING UNFAIR
COMPETITION AND TORTIOUS
INTERFERENCE (WITH EXHIBITS A-M)**

**EXHIBITS C, D, E, G, I, J, AND K
SUBMITTED UNDER SEAL**

Date: July 10, 2008
Time: 2:00 p.m.
Location: Courtroom 2, 4th Floor
Judge: The Honorable Claudia Wilken

1 I, Ryan Scher, hereby declare as follows:

2 1. I am an attorney duly licensed and admitted to practice before this Court and an
3 associate at the law firm of Morgan, Lewis & Bockius LLP. I am one of the attorneys for
4 defendant and counterclaimant Philips Lumileds Lighting Company, LLC ("Lumileds"), in the
5 present action. I have personal knowledge of the facts stated herein, and if called and sworn as a
6 witness, I could testify competently thereto. I make this declaration in support of Lumileds'
7 motion for judgment on the pleadings.

8 2. Attached hereto as Exhibit A is a true and correct copy of the Complaint of
9 Lumileds Lighting U.S., LLC Under Section 337 of the Tariff Act of 1930, As Amended, filed on
10 November 4, 2005, in the International Trade Commission's ("ITC") investigation *In the Matter*
11 *of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv.
12 No. 337-TA-556.

13 3. Attached hereto as Exhibit B is a true and correct copy of the Limited Exclusion
14 Order, issued May 9, 2007, in the ITC's investigation *In the Matter of Certain High-Brightness*
15 *Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

16 4. Attached hereto as Exhibit C is a true and correct copy of Appellant Epistar
17 Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in the ITC's
18 investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products*
19 *Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential information,***
20 ***subject to protective order.***

21 5. Attached hereto as Exhibit D is a true and correct copy of Appellant Epistar
22 Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in the action
23 *Epistar Corp. v. Int'l Trade Comm'n, et al.*, Fed. Cir. No. 2007-1457. ***This exhibit contains***
24 ***confidential information, subject to protective order.***

25 6. Attached hereto as Exhibit E is a true and correct copy of Exhibits N and P to
26 Appellant Epistar Corp.'s Motion to Stay Exclusion Order Pending Appeal, filed July 13, 2007, in
27 the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and*
28

1 *Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential***
 2 ***information, subject to protective order.***

3 7. Attached hereto as Exhibit F is a true and correct copy of the ITC's Order denying
 4 Respondent's Motion to Stay Enforcement of Exclusion Order Pending Appeal, issued August
 5 20, 2007, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*
 6 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

7 8. Attached hereto as Exhibit G is a true and correct copy of the Commission
 8 Opinion on Denial of Motion to Stay, issued August 20, 2007, in the ITC's investigation *In the*
 9 *Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC
 10 Inv. No. 337-TA-556. ***This exhibit contains confidential information, subject to protective***
 11 ***order.***

12 9. Attached hereto as Exhibit H is a true and correct copy of the Order denying
 13 Epistar's Motion for Stay Pending Appeal, issued September 28, 2007, in the action *Epistar*
 14 *Corp. v. Int'l Trade Comm'n, et al.*, Fed. Cir. No. 2007-1457.

15 10. Attached hereto as Exhibit I is a true and correct copy of Complainant Lumileds
 16 Lighting U.S., LLC's First Set of Interrogatories to Respondents Epistar Corp. and United
 17 Epitaxy Co., Ltd., served January 19, 2006, in the ITC's investigation *In the Matter of Certain*
 18 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-
 19 556. ***This exhibit contains confidential information, subject to protective order.***

20 11. Attached hereto as Exhibit J is a true and correct copy of Respondent Epistar
 21 Corporation's Responses to Complainant Lumileds Lighting U.S., LLC's First Set of
 22 Interrogatories, served January 30, 2006, in the ITC's investigation *In the Matter of Certain High-*
 23 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.
 24 ***This exhibit contains confidential information, subject to protective order.***

25 12. Attached hereto as Exhibit K is a true and correct copy of Respondent Epistar
 26 Corporation's Supplemental Responses to Complainant Lumileds Lighting U.S., LLC's First Set
 27 of Interrogatories, served March 3, 2006, in the ITC's investigation *In the Matter of Certain*
 28 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-

1 556. *This exhibit contains confidential information, subject to protective order.*

2 13. Attached hereto as Exhibit L is a true and correct copy of Order No. 2: Issuance of
3 Ground Rules, issued December 8, 2005, in the ITC's investigation *In the Matter of Certain*
4 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-
5 556.

6 14. Attached hereto as Exhibit M is a true and correct copy of the July 11, 2003
7 hearing transcript in the action *Lumileds Lighting v. Epistar Corp.*, Nos. C-02-5077 (N.D. Cal.,
8 Judge Wilken presiding).

9 I declare under the penalty of perjury under the laws of California and the United States
10 that the foregoing is true and correct. Executed this 5th day of June, 2008 in Palo Alto,
11 California.

12 Respectfully submitted,

13
14
15 By /s/ Ryan L. Scher

16 Ryan L. Scher (State Bar. No. 244706)
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23 Attorney for Defendant and
24 Counterclaimant
25 PHILIPS LUMILEDS LIGHTING
26 COMPANY, LLC
27
28

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Michael J. Lyons, am the ECF user whose ID and password are being used to file this Declaration of Ryan L. Scher In Support of Philips Lumileds' Motion for Judgment on the Pleadings. In compliance with General Order 45.X.B., I declare under the penalty of perjury under the laws of the United States of America that Ryan L. Scher has concurred in this filing.

Executed this 5th day of June 2008, at Palo Alto, California.

/s/ Michael J. Lyons